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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,196	11/13/2001	Carol L. Erdman	53394.000516	6155

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/987,196

Applicant(s)

ERDMAN, CAROL L.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22,25-44 and 47-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22,25-44,47-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Regarding the rejection of claims 1-12, 14-17, 19-22, 24-27, 29-44, 46-49, and 51 as being anticipated by Roe USPN 5998695, applicant's arguments are not persuasive. Applicant argues Roe does not disclose an absorbent article wherein only a portion of a surface of the topsheet is hydrophilic. Amended independent claim 1 recites, "only a portion of a surface of said topsheet defined by an area that corresponds to a predetermined insult point is hydrophilic". A predetermined insult point can be any point on the topsheet. For example, a predetermined insult point is different for boys and for girls. In the claim, the predetermined insult point is not limited to a specific measured point. Therefore, given the broadest reasonable interpretation, any part or portion of the hydrophilic treated topsheet can constitute a portion of the surface of the topsheet, and can be construed as a predetermined insult point. The 'comprising' language used in the independent claims is inclusive or open-ended and does not exclude additional unrecited elements, compositional components, or steps. Therefore, Roe comprises an area within the predetermined insult point that is hydrophilic, but additionally comprises other areas that are hydrophilic.

As to claim 19, the forward most point of the treated hydrophilic zone is defined as 0-20mm from the front edge of the absorbent core and the rear most pint of the hydrophilic zone is 0-20 mm from the back edge of the absorbent core. Therefore, if the zero limitations are considered, the entire topsheet of Roe is a hydrophilic zone.

2. As to the rejection of claims 13, 18, 23, 28, 45, and 50 as being unpatentable over Roe USPN 5998695 in view of Guidotti, applicant's arguments are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, applicant has relied on Guidotti for a teaching of a specific wetting area for the benefit of quick dispersal of fluids to other parts of the absorbent.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-12 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe USPN 5998695.

As to claims 1-3, 9-12, and 14-17, Roe discloses an absorbent article comprising 20: a front and rear waist portion cooperating to form a waist opening (Figure 2); a crotch region formed between the front waist and rear waist portions (Figure 2); a

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selectively-permeable topsheet **24**. The topsheet is selectively permeable as Roe discloses the topsheet may comprise hydrophobic fibers (col. 6, lines 1-14) and treated to be hydrophilic on an upper (outer) surface. Therefore, the lower (inner surface) is hydrophobic (col. 6, lines 1-14). The article further includes a substantially impermeable backsheet **26**, and an absorbent core **28** disposed between the selectively permeable topsheet and substantially impermeable backsheet. The topsheet of Roe comprises at least one treated hydrophilic zone – upper surface and at least one non-treated hydrophobic zone – lower surface (col. 6, lines 1-14). Given the broadest reasonable interpretation, any part of the topsheet is a predetermined insult point and thus the hydrophilic treated topsheet can constitute a portion of the surface of the topsheet, and can be construed as a hydrophilic zone. The treated hydrophilic zone of Roe comprises a surfactant (col. 6, lines 1-14) and a skin-wellness substance (col. 6, lines 32-53). The forward most point of the treated hydrophilic zone is defined as 0-20mm from the front edge of the absorbent core and the rear most point of the hydrophilic zone is 0-20 mm from the back edge of the absorbent core. Therefore, if the zero limitations are considered, the entire topsheet of Roe is a hydrophilic zone.

Roe discloses the treated hydrophilic zone is defined by an area that corresponds to a predetermined insult point that includes the central region and a male and female insult point in that the entire upper surface of the topsheet comprises the predetermined insult point.

As to claim 4, the skin-wellness substance is a substance effective or perceived as being effective in providing skin protection, skin care, skin improvement, or any combination thereof (col. 6, lines 32-53).

As to claims 5 and 8, Roe discloses the skin-wellness substance is selected from the claimed group of materials (col. 14, lines 15-47).

As to claims 6 and 7, Roe incorporates by reference suitable skin-wellness substances include Aloe and Vitamin E (col. 14, lines 43-47 refers to Roe USPN 5609587, which lists Aloe and Vitamin E as components of a skin-wellness substance col. 23, lines 28-44).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 13, 18, 19-22, 25-28, 29-44, and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe in view of Guidotti et al. USPN 5741241.

Claims 13, and 18 recite length and width dimensions for the treated hydrophilic zone. It is obvious Roe has transverse and longitudinal dimensions of the topsheet (Figure 2) however Roe does not specifically disclose the dimensions. Although it is old and well known in the art to provide an insult area of a topsheet with an oval configuration, the examiner is relying on Guidotti to show a portion of an absorbent article being designated as a wetting area (Guidotti Figure 1, element 16 and col. 4, lines 16-26). Guidotti further discloses a hydrophilic layer 16 that functions as a receiving area and allows liquid to quickly flow penetrate and covers only the wetting area (col. 4, lines 4-7, and lines 23-31). Based on the teachings of Roe and Guidotti, it would have been within the level of one of ordinary skill in the art to provide a hydrophilic oval area that corresponds to a wetting region to receive discharged body liquids that first contact the diaper surface for the quick penetration and dispersal of those body liquids.

Regarding the dimensions of the wetting region, it would have been an obvious matter of design choice to provide the topsheet and insult zones of Roe/Guidotti with the claimed dimensions, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claims 19, 21, 22, 25-29, 31-35, 41-44, and 47-50, Roe discloses an absorbent article comprising **20**: a front and rear waist portion cooperating to form a waist opening (Figure 2); a crotch region formed between the front waist and rear waist portions (Figure 2); a selectively-permeable topsheet **24**. The topsheet is selectively

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permeable as Roe discloses the topsheet may comprise hydrophobic fibers (col. 6, lines 1-14) and treated to be hydrophilic on an upper (outer) surface. Therefore, the lower (inner surface) is hydrophobic (col. 6, lines 1-14). The article further includes a substantially impermeable backsheet **26**, and an absorbent core **28** disposed between the selectively permeable topsheet and substantially impermeable backsheet. The topsheet of Roe comprises at least one treated hydrophilic zone – upper surface and at least one non-treated hydrophobic zone – lower surface (col. 6, lines 1-14). Given the broadest reasonable interpretation, any part of the topsheet is a predetermined insult point and thus the hydrophilic treated topsheet can constitute a portion of the surface of the topsheet, and can be construed as a hydrophilic zone. The treated hydrophilic zone of Roe comprises a surfactant (col. 6, lines 1-14) and a skin-wellness substance (col. 6, lines 32-53). The forward most point of the treated hydrophilic zone is defined as 0-20mm from the front edge of the absorbent core and the rear most point of the hydrophilic zone is 0-20 mm from the back edge of the absorbent core. Therefore, if the zero limitations are considered, the entire topsheet of Roe is a hydrophilic zone.

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configuration, the examiner is relying on Guidotti to show a portion of an absorbent article being designated as a wetting area (Guidotti Figure 1, element 16 and col. 4, lines 16-26). Guidotti further discloses a hydrophilic layer 16 that functions as a receiving area and allows liquid to quickly flow penetrate and covers only the wetting area (col. 4, lines 4-7, and lines 23-31). Based on the teachings of Roe and Guidotti, it would have been within the level of one of ordinary skill in the art to provide a hydrophilic oval area that corresponds to a wetting region to receive discharged body liquids that first contact the diaper surface for the quick penetration and dispersal of those body liquids.

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As to claims 20, Roe discloses the skin-wellness substance is selected from the claimed group of materials (col. 14, lines 15-47).

As to claim 30, the garment of Roe further comprises first and second leg gathers Figure 2.

As to claims 36, the skin-wellness substance is a substance effective or perceived as being effective in providing skin protection, skin care, skin improvement, or any combination thereof (col. 6, lines 32-53).

As to claims 37 and 40, Roe discloses the skin-wellness substance is selected from the claimed group of materials (col. 14, lines 15-47).

As to claims 38, and 39, Roe incorporates by reference suitable skin-wellness substances include Aloe and Vitamin E (col. 14, lines 43-47 refers to Roe USPN 5609587, which lists Aloe and Vitamin E as components of a skin-wellness substance col. 23, lines 28-44).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Examiner
Art Unit 3761

May 16, 2005


Larry I. Schwartz
Supervisory Patent Examiner
Group 3700